

PROCUREMENT GUIDE:

Getting and KEEPING your

FEMA grant dollars!



... from the 30K-foot view

Purpose of this publication: To assist eligible Applicants in identifying and applying the required Federal regulations (**44 CFR 13.36**) when using FEMA funds for the procurement of disaster and non-disaster materials, supplies, public works projects and services.

This publication is primarily intended for: Local governing authorities, eligible private nonprofits (PNPs) and tribal governing authorities who receive funding through FEMA Public Assistance (PA), Hazard Mitigation Assistance (HMA) programs and Homeland Security (HLS) grants where **44 CFR 13.36** is applicable.

METHODS of procurement [44 CFR 13.36 (d)]

TYPE OF PROCUREMENT	WHEN TO USE
Small purchases	<ul style="list-style-type: none">• Applies to all contracts less than \$100K.• Requires only quotes.
Sealed bids	<ul style="list-style-type: none">• Preferred method for procuring construction contracts.• Awarded to the lowest responsive, responsible bidder.
Competitive proposals	RFP <ul style="list-style-type: none">• Qualifications + price selection. RFQ (A/E design services ONLY) <ul style="list-style-type: none">• Qualifications-ONLY based selection.
Non-competitive proposals	<ul style="list-style-type: none">• Restrictive. MUST meet a number of requirements [44 CFR 13.36 (d) (4)].• Includes sole source + extraordinary circumstances + insufficient responses.• Requires cost analysis.

RFQs + RFPs must be publicized.

Separating larger projects into multiple smaller projects to avoid a competitive bid process is not allowed.

Local governments and quasi-governmental agencies – like water boards, levee boards, etc. – must follow 44 CFR 13.36 and the cost principles articulated in 2 CFR 225. Private nonprofits (PNPs) are also required to follow 44 CFR 13.36 in addition to the Uniform Administrative Requirements for grants and Agreements as per 2 CFR 215, as well as the cost principles articulated in 2 CFR 230. Educational institutions are required to follow 44 CFR 13.36 as well as 2 CFR 220.

Procurement REQUIREMENTS

by category of purchase + size of contract

CATEGORY OF PURCHASE	FEDERAL REGULATIONS: [44 CFR 13.36]	SIZE OF CONTRACT	STATE REQUIREMENTS [TITLE 38]	LOCAL
Materials + supplies	Quotes required.	Less than \$1K and \$1K - \$9,999	No bid requirement. Louisiana Legislative Auditor (LLA) recommends 3 written quotes.	Check with local authorities for local procurement rules.
		\$10K - \$30K	3 telephone or FAX quotes.	
		\$30K +		
		Less than \$100K	Bid required.	
	Bid required.	\$100K +		
Public works	Quotes required.	Less than \$100K	No bid requirement. LLA recommends RFP process and/or 3 solicited bids.	
		\$100K +		
	Bid required.	Less than \$150K		
		\$150K +	Bid required.	
Services (Except for A/E)	Quotes required.	Less than \$100K	No bid requirement. LLA recommends RFP process and/or 3 solicited bids.	
	Bid required (RFP).	\$100K +		
A/E services	RFQ	ANY	No requirement.	
GSA	<ul style="list-style-type: none"> Authorized under the Disaster Recovery Purchasing Program or cooperative purchasing program. Must review 3 GSA quotes; make "best value" determination. 	ANY	<ul style="list-style-type: none"> Authorized with the permission of the GOHSEP Director. Must use Louisiana vendor. Must review 3 GSA quotes; make "best value" determination. 	
State Cooperative Purchase (SCP)	Authorized under 44 CFR 13.36 (b) (5)	ANY	<ul style="list-style-type: none"> Authorized under Louisiana Revised Statute (LRS) Title 38:2212.1 (F) (Louisiana bid law). Limited to public entities as defined by 38:2211. ONLY Office of State Purchasing (OSP) SCP contracts. Can be used for materials + supplies + equipment. 	

The most restrictive rules apply; those are circled above. Local rules may vary. Responses ONLY count if they are responsive and responsible.

Types of CONTRACTS

CONTRACTS TO USE

Lump sum	Contract for work within a prescribed boundary with a clearly defined scope + a total price.
Unit price	Work done on an item-by-item basis, with cost determined per unit (e.g., box, each, roll).
Cost + fixed fee	Total cost with a defined (fixed) fee added to the price.
Time + materials	Time based on an hourly rate schedule + costs for needed materials. Generally preferred for consulting, project management, inspectors, monitoring contracts, etc.

CONTRACTS TO AVOID

Time + materials	Contracts used for emergency protection measures should not exceed 70 continuous hours of actual work immediately following the incident.
Piggyback contracts	Work done using another public entity's pre-existing contract. Highly discouraged by FEMA. May be accepted if costs are reasonable and elements of contract exact for both users.
Cost + percentage of costs	Contractor's cost plus a percentage fee. Not eligible under FEMA regulations.
Percentage of construction cost	Work done for a percentage of the cost of the work. Not eligible under FEMA regulations.

Required contract PROVISIONS [44 CFR 13.36 (h-i)]

PROVISION	APPLICATION
<input type="checkbox"/> Bonding requirements.	Construction or facilities improvement contracts or subcontracts exceeding \$100K. Bonding requirements include: Bid guarantee + performance bond + payment bond. Bonding company requirements can be found in LRS 38.2218.
<input type="checkbox"/> Administrative + legal remedies for violation or breach of contract.	All contracts greater than \$100K.
<input type="checkbox"/> Termination for cause + for convenience (also see 44 CFR 13.44 for procedure for termination for convenience).	All contracts greater than \$10K.
<input type="checkbox"/> Compliance with <i>Executive Orders</i> (EOs) 11246 + 11375 [Equal Employment Opportunity (EEO)].	All construction contracts greater than \$10K.
<input type="checkbox"/> Compliance with <i>Copeland Anti-Kickback Act</i> .	All contracts or subcontracts for construction or repair.
<input type="checkbox"/> Compliance with <i>Davis-Bacon Act</i> .	It is NOT required for State or local contracts under the FEMA PA program or HMA programs. May apply to other FEMA grant programs. May be required by local ordinance.
<input type="checkbox"/> Compliance with sections 103 and 107 of the <i>Contract Work Hours and Safety Standards Act</i> .	Construction contracts greater than \$2K + those greater than \$2.5K for other contracts which involve the employment of mechanics or laborers.
<input type="checkbox"/> Compliance with <i>Clean Air Act</i> + <i>Clean Water Act</i> + Environmental Protection Agency (EPA) regulations.	All contracts + subcontracts + subgrants greater than \$100K.
<input type="checkbox"/> Compliance with mandatory State energy efficiency standards + policies.	<ul style="list-style-type: none"> •All construction contracts. •Standards + policies are defined in LRS 40:1730.21 through LRS 40:1730.48.
<input type="checkbox"/> Notice of awarding agency requirements for reporting.	All contracts are required to State that contractor is subject to FEMA and/or GOHSEP reporting requirements.
<input type="checkbox"/> Notice of awarding agency requirements to patent rights + inventions.	All contracts. May be subject to government unrestricted use or ownership.
<input type="checkbox"/> Awarding agency requirements pertaining to copyrights + data.	All contracts. May be subject to government unrestricted use.
<input type="checkbox"/> Access to contractor grant-related records.	All contracts.
<input type="checkbox"/> Retention of required records for three (3) years.	All contracts. Requirement to maintain all records for three (3) years after closeout. Closeout may be defined differently for different grant programs.

DISCLAIMER: This document provides guidance on Federal procurement regulations as stated in 44 CFR 13.36. It does not and is not designed to address all procurement issues which an Applicant may face. **It is the Applicant's responsibility to assure that Federal regulations are followed in all circumstances involving Federal funding.**

FAQs

1. What is procurement? Under Federal guidelines found in 44 CFR 13.36, procurement is the process of **acquiring** (buying, purchasing, renting/leasing or otherwise obtaining) **goods and services**.

2. What are the three (3) most important points I need to know about FEMA procurement?

- Must have a **competitive** process.
- **Stay away from prohibited contracts.**
- **DOCUMENT, DOCUMENT, DOCUMENT!**

3. Where can I find guidelines for procurement?

- 44 CFR Part 13.36 provides Federal guidance: http://edocket.access.gpo.gov/cfr_2004/octqtr/44cfr13.36.htm
- **General Services Administration (GSA)** provides guidance for using pre-competed contracts on the GSA schedule: <http://www.gsa.gov/>
- **State guidance** can be found in the *Before a Disaster* and *After a Disaster* guides: <http://www.la.la.gov/disasterassistance/disasterguide/>
- **LLA Public Bid Law Summary FAQ:** <http://www.la.state.la.us/legalassistance/>
- Ask **local authorities** for local purchasing guidelines.

4. What is the 30K-foot process for procuring using Federal funds such as Public Assistance (PA) or disaster recovery grants?

FEMA accepts four (4) methods of procurement:

- **Small purchase** procedures.
- **Sealed bids.**
- **Competitive proposals.**
- **Non-competitive proposals** in limited situations.

5. Can I procure a combination of eligible and ineligible work in one contract? Yes.

- FEMA-eligible work needs to be **separated** from FEMA-ineligible work in the contract.
- Grant scope of work (SOW), RFP/RFQ and contract should be **consistent**.

6. What is a cost analysis? When is it needed?

A cost analysis is an Applicant's demonstration that the cost of an acquisition is **reasonable**.

ALL acquisitions require a cost analysis.

- **Competitive procurement** (sealed bids, RFP, etc.) may be an acceptable form of cost analysis.
- **Non-competitive procurements** and RFQs require a cost analysis prior to awarding the contract.

7. Is there a standard cost analysis format?

No. The method and degree of analysis is dependent upon **existing circumstances**. Cost analysis needs to be supported by copies of quotes, cost of similar products/services, etc.

8. What is "cost reasonableness"? A cost that is both **fair** and **equitable** for the type of work performed under existing circumstances at the time the cost is incurred.

9. What is the difference between an RFQ and an RFP? An RFQ may **only** be used for the acquisition of architecture and engineering (A/E) **design** services. Cost is negotiated separately.

A request for proposals (RFP) may be used for any acquisition. Price **MUST** be a selection criteria.

10. Do I need to document all procurement?

Yes. Document the "who, what, when, where, why and how much." Without proper documentation you will not be reimbursed.

11. Is my procurement process subject to audit? Yes. Build your records from the beginning so they are audit-ready. **Following improper procurement, poor record keeping is the #2 reason for failing to be reimbursed.**

Possible procurement penalties:

- Withhold payment.
- Deobligate funds.
- Suspend grant.
- Withhold future grants.
- And MORE!

A/E	Architecture/Engineering design services	HMA	Hazard Mitigation Assistance (which includes the Flood Mitigation Assistance [FMA], Repetitive Flood Claims [RFC] and Severe Repetitive Loss [SRL] non-disaster grants and the post-disaster Hazard Mitigation Grant Program [HMGP]).
CFR	Code of Federal Regulations		
EO	Executive Order		
EEO	Equal Employment Opportunity		
EPA	Environmental Protection Agency	LLA	Louisiana Legislative Auditor
GOHSEP	Governor's Office of Homeland Security & Emergency Preparedness	OSP	Office of State Purchasing
FEMA	Federal Emergency Management Agency	PA	Public Assistance
GSA	General Services Administration	PNP	Private Nonprofit
HLS	Homeland Security	PW	Project Worksheet
		RFP	Request for Proposal
		RFQ	Request for Qualifications
		SCP	State Cooperative Purchase
		SOW	Scope of Work

FEMA PA WORK CATEGORIES

EMERGENCY WORK

- Category A** Debris Removal
- Category B** Emergency Protective Measures

PERMANENT WORK

Repair Restoration of Disaster-damaged Public Facilities and Property

- Category C** Roads + Bridges
- Category D** Water Control Facilities
- Category E** Buildings + Contents + Equipment
- Category F** Utilities
- Category G** Parks + Recreational + Other

What else do I need to know?

It is YOUR responsibility to comply with local, State, Federal – and your own – purchasing guidelines in order to get and keep all funds you were approved to receive.

For more information or help with your procurement needs, visit <http://www.fema.gov> (search for procurement guidelines 44 CFR 13.36) OR contact your organization's purchasing officer OR **GOHSEP, 225.925.7500.**